

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

December 9, 2003

Committee
Report No. 03-153

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on November 19, 2003, makes reference to County Communication No. 03-20, from the Council Chair, regarding proposed contracts for special counsel.

Your Committee is in receipt of correspondence dated November 6, 2003, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN COUNTY OF MAUI V. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006". The purpose of the proposed resolution is to authorize \$10,000 in additional compensation for special counsel, the Law Offices of Michael Jay Green, to represent James H. Apana, Jr., in the referenced proceedings, for a total compensation not to exceed \$20,000.

Your Committee notes that these proceedings involve disputes arising at the Montana Beach Condominium project adjacent to Baldwin Beach Park in Paia, Maui. The Department of the Corporation Counsel has previously informed your Committee that accusations have been made of "criminal extortion" by former Mayor James H. Apana, Jr., in connection with the handling of the project.

Your Committee further notes that, by Resolution No. 03-110, the Council authorized initial compensation in the amount of \$10,000 in these proceedings. In addition, by Resolution No. 03-129, the Council authorized the hiring of special counsel, the Law Offices of Michael Jay Green, in connection with a related Federal court case involving the subject project, in which the complaint alleges extortion of property rights and other constitutional violations by former Mayor Apana, a former Corporation Counsel, and the County, with total compensation not to exceed \$10,000.

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At its meeting, your Committee met with the First Deputy Corporation Counsel.

Your Committee received testimony from Christine Hemming, an appellant in one of the subject appeals (Docket No. 01-0001 before the Maui Planning Commission), who supported the appropriation of additional compensation. Ms. Hemming further testified about perceived factual deficiencies with respect to the Hollands' case in the County of Maui v. Holland enforcement action.

There being no other testifiers, the First Deputy Corporation Counsel provided a brief overview of the case and the work performed to date by special counsel. Your Committee was also informed of the status of billings by special counsel in these proceedings. The First Deputy Corporation Counsel opined that, having reviewed the invoices submitted, the amount billed appeared to be reasonable. Your Committee requested that the First Deputy Corporation Counsel remind special counsel of the risk of nonpayment when billings are incurred in excess of the amount previously authorized by the Council.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution.

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING ADDITIONAL COMPENSATION FOR SPECIAL COUNSEL LAW OFFICES OF MICHAEL JAY GREEN, FOR JAMES H. APANA, JR., FORMER MAYOR, IN COUNTY OF MAUI V. HOLLAND, CIVIL NO. 01-1-0642 (3) AND IN THE MATTER OF THOSE APPEALS BEFORE THE MAUI PLANNING COMMISSION RELATING TO THE MONTANA BEACH CONDOMINIUM PROJECT, PAIA, MAUI, HAWAII, DOCKET NO.: APPEALS 01-0001 THROUGH 01-0006" be ADOPTED.

Adoption of this report is respectfully requested.

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